

REMARKS

Applicants thank the Examiner for the thorough consideration given the present application. Claim 6 was previously cancelled without prejudice to or disclaimer of the subject matter set forth therein. Claims 1-5 and 7-24 are pending. By this Amendment, claims 1, 2, 4, 5, 7-9, 12, 13, 15 and 17-21 are amended. Claims 1, 13 and 15 are independent. The Examiner is respectfully requested to reconsider the rejections in view of the amendments and remarks set forth herein.

Interview with Examiner

An interview was conducted with the Examiner in charge of the above-identified application and the Examiner's Supervisor. Applicants' representative greatly appreciates the courtesy shown by the Examiners during the interview. In the Interview with the Examiners, the Ennis and Korfgen references were discussed. It was explained that it would not have been obvious to one having ordinary skill in the art at the time the present invention was made to modify the Ennis reference in view of the teachings of Korfgen to include brush hairs projecting substantially radially therefrom as recited in independent claim 1 of the present invention (also, claims 13 and 15 have been amended to include this language). The Examiners indicated that they agreed with the presented arguments. These arguments have been reiterated hereinbelow. Therefore, the Examiner's rejections in view of the Ennis and Korfgen references should be withdrawn.

Rejections Under 35 U.S.C. §§ 102 and 103

Claims 13-15 and 18-21 stand rejected under 35 U.S.C. §102 (b) as being anticipated by Ennis, U.S. Patent No. 4,354,291. Claims 1-5, 7-12, 16 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ennis in view of Korfgen et al., U.S. Patent No. 4,614,449. these rejections are respectfully traversed.

At the outset, it is respectfully pointed out that claims 13 and 15 have been amended to recite subject matter that has been acknowledged by the Examiner as not being taught by the Ennis reference (see page 4, paragraph 12 of the Examiner's Office Action). Specifically, claims 13 and 15 have been amended to recite substantially radially projecting brush hairs, which are not disclosed by the Ennis reference. In view of this, the Examiner's rejection under 35 U.S.C. § 102(b) has been rendered moot. In view of this, Applicants will address the Examiner's rejection in view of the combination of Ennis and Korfgen.

The present invention is directed to a livestock brushing device. Independent claims 1, 13 and 15 recite a combination of elements including a livestock brush having "a shaft and brush hairs projecting radially therefrom." Applicants respectfully submit that the references relied on by the Examiner fail to teach or suggest the present invention as recited in independent claims 1, 13 and 15.

The Office Action clearly admits that Ennis also does not disclose a brush having hairs projecting substantially radially from the shaft. Applicant respectfully notes that Ennis discloses, in the paragraph bridging cols. 5 and 6, that Ennis' brush 48 is preferably of a type having soft bristles which collapse when the brush is not rotating but which expand outwardly during

rotation. Thus, Applicants agree with the Examiner that Ennis does not disclose a brush having hairs projecting radially from the shaft when the brush is not being driven.

In an attempt to remedy this omission, the office Action turns to Korfgen, which discloses a brush for cleaning the inside of containers, e.g., bottles. Korfgen's container brush has bristles which extend radially outward from an axis or rotation of the brush. See, for example, the last paragraph in col. 2, and Figs. 1 and 2, as well as bristles extending at various angles to the horizontal and vertical at the bottom of the brush – see Figs. 1 and 2, for example.

The Office Action concludes that it would be obvious to modify Ennis in view of Korfgen to include hairs to project substantially radially from the shaft "for the purpose of having an optimum cleaning effect of the hairs (column 3, lines 1-5).

Applicants respectfully disagree with this conclusion because Ennis and Korfgen teach away from being combined, as suggested. Ennis is directed to a motor vehicle, e.g., a car, wash brush where scratching of a car's exterior paint surface is anathema. Applicants respectfully submit that this is why the bristles of Ennis' brush are soft and "collapse when the brush is not rotating" (last line in col. 5 of Ennis), i.e., to avoid scratching of the motor vehicle's paint finish. The last thing that a car wash brush needs to be fitted with are stiff bristles, because they would tend to scratch a motor vehicle's finish and result in no customers wanting to bring their vehicles to a car wash with such stiff bristles. Korfgen, on the other hand, needs to remove caked on solids inside of bottles, bottles that are made of glass which is not going to be scratched with rigid nylon bristles that are stiff enough to remove caked on solids from the interior surface of container like glass bottles. In other words, the characteristics of a car wash brush bristles, which must not scratch a car's expensive paint finish, and the characteristics of a bottle brush

bristles, which cannot scratch the glass bottle's interior surface on which solids are caked are so fundamentally different that those different characteristic teach away from making the proposed modification of Ennis in view of Korfgen.

Furthermore, Applicants respectfully submit that the subject matter in issue is not a car wash brush device, but a livestock brushing device for brushing livestock, language that is found not only in the preamble of the claims, but also in the body of the claims.

The Court of Appeals for the Federal Circuit has stated that whether to treat claim preamble language as a positively recited claim limitation is “resolved only on review of the entirety of the patent to gain an understanding of what the inventors actually invented and intended to encompass by the claim;” Corning Glass Works v. Sumitomo Electric USA, Inc., 9 USPQ2d 1962, 1966 (Fed. Cir. 1989). The Court also stated that “[C]lear reliance on the preamble during prosecution to distinguish the claimed invention from prior art may indicate that the preamble is a claim limitation because the preamble is used to define the claimed invention.” Catalina Marketing International v. Coolsavings.com, Inc., 62 USPQ2d 1781, 1785 (Fed. Cir. 2002); Bristol-Meyers Squibb Co. v. Ben Venue Labs., Inc., 58 USPQ2d 1508, 1513 (Fed. Cir. 2001).

Applicants have relied on the claim preamble throughout the extensive prosecution of this Application to distinguish the claimed invention from Ennis. Accordingly, it is abundantly clear, that this positively recited feature of a livestock brushing device for brushing livestock has to be given patentable weight in the examination of this patent application.

Thus, to the extent that the rejection fails to take this positively recited feature into account in this rejection, it is improper and without merit.

With regard to the dependent claims, Applicants respectfully submit that these claims are allowable due to their respective dependence on independent claims 1, 13 and 15, as well as due to the additional recitations in these claims.

In view of the above amendments and remarks, Applicants respectfully submit that claims 1-5 and 7-21 clearly define the present invention over the reference relied on by the Examiner. Reconsideration and withdrawal of the Examiners' rejection under 35 U.S.C. §§ 102 and 103 are respectfully requested.

Additional Claims

Claims 22-24 have been added for the Examiner's consideration. Applicants respectfully submit that these claims are allowable due to their respective dependence on independent claims 1, 13 and 15, as well as due to the additional recitations in these claims.

Favorable consideration of additional claims 22-24 are respectfully requested.

CONCLUSION

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. It is believed that a full and complete response has been made to the outstanding Office Action, and that the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone Paul C. Lewis (Reg. No. 43,368) at (703) 208-8000.

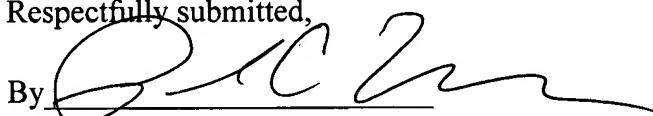
Application No. 10/506,781
Amendment dated May 6, 2008
Reply to Office Action of February 6, 2008

Docket No.4452-0150PUS1
Page 14 of 14

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.147; particularly, extension of time fees.

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Respectfully submitted,

By 

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